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26192 7590 06/30/2010 FISH & RICHARDSON P.C. PO BOX 1022 MINNEAPOLIS, MN 55440-1022			EXAMINER LE, KHANH H	
			ART UNIT 3688	PAPER NUMBER
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PATDOCTC@fr.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/748,682	<b>Applicant(s)</b> KONINGSTEIN, ROSS	
	<b>Examiner</b> KHANH H. LE	<b>Art Unit</b> 3688	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 05/05/2010.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-118 is/are pending in the application.
- 4a) Of the above claim(s) 84-118 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-24, 26-58, 60-83 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |                                                                                      |                                                                   |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____                                                          | 6) <input type="checkbox"/> Other: _____                          |

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### DETAILED ACTION

1. This Office Action is responsive to the correspondence filed 05/05/2010, herein “Response”, which was responsive to Office Action of 02/08/2010, herein “02/08/2010 OA”. Claims 1-3, 5-24, 26-58, 60-83 were and remain pending (claims 84-118 were withdrawn, claims 4, 25 cancelled). Of these, claims 1 (method), 34 (apparatus), 65 (method) and 76 (computer readable medium) are independent and amended.

### Priority

2. Applicant’s claim for the benefit of prior-filed application Provisional Application SN 60516281, filed 11/03/2003) under 35 U.S.C. 119(e) or under 35 U.S.C. 120, 121, or 365(c) is acknowledged. Applicant has not complied with one or more conditions for receiving the benefit of an earlier filing date under 35 U.S.C. 119(e) as follows:

The later-filed application must be an application for a patent for an invention which is also disclosed in the prior application (the parent or original nonprovisional application or provisional application). The disclosure of the invention in the parent application and in the later-filed application must be sufficient to comply with the requirements of the first paragraph of 35 U.S.C. 112. See *Transco Products, Inc. v. Performance Contracting, Inc.*, 38 F.3d 551, 32 USPQ2d 1077 (Fed. Cir. 1994).

The disclosure of the prior-filed application fails to provide adequate support or enablement in the manner provided by the first paragraph of 35 U.S.C. 112 for one or more claims of this application. **Morphing is not disclosed in Application No. 60516281. Accordingly, claims 1-33, 34-64, 65-75, and 76-83 are not entitled to the benefit of the prior application.**

Since this application repeats a substantial portion of prior application No. 60516281 and adds and claims additional disclosure not presented in the prior application and names an inventor or inventors named in the prior application, it may constitute a continuation-in-part of the prior application. Should applicant desire to obtain the benefit of the filing date of the prior application, attention is directed to 35 U.S.C. 120 and 37 CFR 1.78. It is noted that the specification and the oath would have to be corrected accordingly.

### Claim Objections

3. to Claim 6: withdrawn.

***Claim Rejections - 35 USC § 101***

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4a. Method Claims 1 and 65 are considered statutory because it includes generating, receiving, delivering by computers, from a server to a user device a morphing advertisement allowing alternate display formats, core activities of the invention.

4b. Claim 34 is considered statutory because including a server performing operations and is considered structure.

**4c. Claims 76-83 are rejected under 35 U.S.C. 101 because the claimed inventions are directed to non-statutory subject matter.**

**Claim 76 (computer readable medium):**

Here claim 76 is directed to a “processor readable medium comprising code...”. The specification is silent as to the nature of the medium. Thus under the broadest reasonable interpretation, the **computer readable medium can be a compact disc or transitory propagating signals per se which cover a non-statutory embodiment and therefore must be rejected under § 101.**

**A cure is suggested as follows:** See USPTO Memo dated 01/26/2010 on Subject Matter Eligibility of Computer Readable Media at [http://www.uspto.gov/patents/law/notices/101\\_crm\\_20100127.pdf](http://www.uspto.gov/patents/law/notices/101_crm_20100127.pdf), excerpted below, bold and underline emphasis added: Subject Matter Eligibility of Computer Readable Media

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The United States Patent and Trademark Office (USPTO) is obliged to give claims their broadest reasonable interpretation consistent with the specification during proceedings before the USPTO. See *In re Zletz*, 893 F.2d 319 (Fed. Cir. 1989)(during patent examination the pending claims must be interpreted as broadly as their terms reasonably allow). **The broadest reasonable interpretation of a claim drawn to a computer readable medium (also called machine readable medium and other such variations) typically covers forms of non-transitory tangible media and transitory propagating signals per se in view of the ordinary and customary meaning of computer readable media, particularly when the specification is silent.** See MPEP 2111.01. When the broadest reasonable interpretation of a claim covers a signal per se, the claim must be rejected under 35 U.S.C. S 101 as covering non-statutory subject matter. See *In re Nuijten*, 500 F.3d 1346, 1356-57 (Fed. Cir. 2007) (transitory embodiments are not directed to statutory subject matter) and **Interim Examination Instructions for Evaluating Subject Matter Eligibility Under 35 U.S.C. Section 101, Aug. 24, 2009, p. 2.**

The USPTO recognizes that applicants may have claims directed to computer readable media that cover signals per se, **which the USPTO must reject under 35 U.S.C. 8 101** as covering both non-statutory subject matter and statutory subject matter. In an effort to assist the patent community in overcoming a rejection or potential rejection under 35 U.S.C. S 101 in this situation, the USPTO suggests the following approach. **A claim drawn to such a computer readable medium that covers both transitory and non-transitory embodiments may be amended to narrow the claim to cover only statutory embodiments to avoid a rejection under 35 U.S.C. 101 by adding the limitation "non-transitory" to the claim.** Cf. *Animals - Patentability*, 1077 Off. Gaz. Pat. Office 24 (April 21, 1987) (suggesting that applicants add the limitation "non-human" to a claim covering a multi-cellular organism to avoid a rejection under 35 U.S.C. 5 101). Such an amendment would typically not raise the issue of new matter, even when the specification is silent because the broadest reasonable interpretation relies on the ordinary and customary meaning that includes signals per se. The limited situations in which such an amendment could raise issues of new matter occur, for example, when the specification does not support a non-transitory embodiment because a signal per se is the only viable embodiment such that the amended claim is impermissibly broadened beyond the supporting disclosure. See, e.g., *Gentqv Galleiy, Inc. v. Berkline Corp.*, 134 F.3d 1473 (Fed. Cir. 1998).

Note: The **Interim Examination Instructions for Evaluating Subject Matter Eligibility Under 35 U.S.C. Section 101, Aug. 24, 2009** can be found at [http://www.uspto.gov/web/offices/pac/dapp/opla/2009-08-25\\_interim\\_101\\_instructions.pdf](http://www.uspto.gov/web/offices/pac/dapp/opla/2009-08-25_interim_101_instructions.pdf).

Claims 77-83 suffer from the same defect as claim 76.

### Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

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The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

**5a. Previous rejection of Claims 34-64 under 35 U.S.C. 112, second paragraph, (because Claim 34 mixes apparatus and method limitations) are withdrawn following proper correction.**

**5b. Claims 38-39, 44-55, 61-63, and 64 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

**The following claims also are unclear as mixing statutory classes (steps in system or apparatus claim):**

Claims 38-39: “is retrieved” in claim 38 is a step, thus 38 and dependent 39 are rejected.

Claim 44-52 are rejected:

Claims 44, 46: “determines...”; Claims 45, 47 : “grants”; Claim 48: “action comprises enhancing”; 49-52: “charged”; meets; charged; calculating, occurs; “is determined”; respectively, are all method steps.

Claims 53-55 are rejected as dependents of 52.

Claim 61: line 6: “determines” is a step. Claims 62-63 are rejected as dependent of claim 61.

Claim 64: “are approved” is a step. See MPEP . See last Office Action p.

**5c. Claims 35-44, 50-54, 58, 60 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

Claim 35-43, 50-54 (dependent on claim 34):

Claim 34 only claims an apparatus comprising a storage database, a server for generating a morphing ad, receiving a request for the ad, delivering the ad in response to the user request.

It is not clear which structures (as required in a system or apparatus claim) are responsible for the actions or steps or results following the “wherein” clauses of claims 35-43, 50-54, 58, 60. That is, the recited limitations are either outside the scope of the claim (e.g. claim

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39; claims 41; 50-52) or are only non functional descriptive material (data only) (e.g. claim 35) which has nothing to do with the system structures as claimed in claim 34.

Claims 53-54 are also rejected as dependents of claim 52.

Note also that all claims, dependent on rejected claims, are also further rejected based dependency grounds.

**Note: For prior art application, even though the Examiner has given weight to the wherein limitations, she does not have to, since these wherein limitations are either outside the scope of the claim (e.g. claim 39, since claim 34 only claims an apparatus comprising a storage database, a server for generating a morphing ad, receive a request for ads, delivering the ad in response to the user request; also e.g. claims 41, 50-52) or as non functional descriptive material (data only) (e.g. claim 35).**

**5d. Claims 45-49, 56-57 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

Claim 44: "the advertising listing system " lacks clear antecedent basis.

Claims 45-49 are rejected as dependents of claim 44.

Claim 56: code "sufficient to enable .. to display" is indefinite since it is unascertainable what would be sufficient.

Claim 57 are rejected as dependent of claim 56.

**5e. Examiner's remarks:**

**The claims have not been amended to overcome the previous rejections of:**

Claims 76-83 are rejected under 35 U.S.C. 101;

Claims 35-44, 50-54, 58, 60 under 35 U.S.C. 112, second paragraph;

claims 45-49, 56-57 under 35 U.S.C. 112, second paragraph;

claims 38-39, 44-55, 61-63, and 64 under 35 U.S.C. 112, second paragraph,

**thus the rejections are maintained. See rejections above.**

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6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. **Claims 1-3, 5-12, 26, 28, 34-43, 56, 58, 60, 65-70, 71, 73 -74 and 76-80, 82-83 are rejected under 35 U.S.C. 103(a) as being unpatentable over Petropoulos et al. (US 2003/0146939 A1) (hereinafter Petropoulos) in view of Official Notice (with e.g. Meisel 7035812, herein Meisel, or Patel US US-2004/0103024, herein Patel, as support thereof).**

**Claims 1, 5, 34, 65 and 76:**

Petropoulos discloses:

A computer-implemented method comprising:

receiving a request for one or more advertisements related to a subject matter of interest to be presented (on a webpage) **with content** associated with a publisher (Fig 7, item 751: "query" or "search"; [0073]);

**delivering at one time**, from the server to an end user device, in response to the request to be presented (on the webpage) **with content** associated with the publisher (e.g. the search results page shown in Figure 1 is considered a webpage **with content** associated with the publisher, the content being other search results, ads, or other logos or insignias that commonly appear on a published webpage. Note that Official Notice is taken that it is old and well-known a published webpage commonly have other logos or insignias featured thereon such as a Yahoo page would have at least the yahoo logo)

**a morphing advertisement**

**including a compact display format** including an associated expansion icon, **an expanded display format** comprising one or more menu options and a reference to a network location for retrieving specified content associated with each menu option,

**and code and instructions** a client device uses to transition the morphing advertisement from the compact display format into the expanded display format upon a user request to display the expanded display format while no longer displaying the compact display



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format (Fig 1, items 60, 53, 54 are morphing ads in a search result lists content page because mousing over or clicking them (i.e. using embedded instructions which read on the claimed code and instructions ) allows viewing preview information such as image 57 of Figure 1 (which reads on the second display format); or allows viewing lists of URLs that can be expanded further; or sortable webpages (which also read on the second display format) ( see [0026-0027]; [0029]). Also see [0042] which discusses preview window 55 of Fig 1 (which also reads on the second display format) obtained by mousing over a first display format such as Fig 1, items 60, 53, or 54. Also see e.g. abstract, [0025] )

**PETROPOULOS** discloses at [0023] *“The defined areas are program-designated (perhaps with JavaScript) areas on results page 59”* reads on providing code enabling the transition from format 1 to format 2:

*[0023] Referring back to search-result page 59 as a whole, recall that this is a result returned after a user has performed a search on the term "Jet." The user must then analyze those results and will typically do so using the combinations of keystrokes and the pointer tool. A feature of the current invention is that the user is shown preview information when the mouse pointer 52 navigates or passes over a defined area such as first defined area 60, second defined area 61, or other defined areas 62, 64, 66, 67, 68 (Hereinafter, the action of navigating or passing the mouse pointer over a region is referred to as a "mouse-over"). **The defined areas are program-designated (perhaps with JavaScript) areas on results page 59.** While these defined areas could be made visible, they are generally invisible to the user. **In one embodiment, upon a pre-defined placement or action of the pointer (e.g. a mouse-over), instructions are sent to the user's web browser to automatically open an embedded preview window and render the relevant contextual information inline with the user's results.** In various implementations of the invention, defined areas may be in any shape or size, located anywhere on the page and may be configured by a programmer, the user, or any process with sufficient access to the system.*

An advertisement is a file or set of files. In **PETROPOULOS** , the advertisement is considered a file or set of files, comprising the totality of data about format 1 (search result), data about format 2 (preview window), including their contents, and functionalities such as the expansion icon and code such as **the JavaScript in PETROPOULOS ‘s** [0023] *“The defined areas are program-designated (perhaps with JavaScript) areas on results page 59”* which enables the transition from format 1 to format 2. **All this data, instructions and code are inherently sent from a server to end user to allow display as disclosed in PETROPOULOS.**

(As discussed earlier during prosecution, since the **PETROPOULOS**’s preview window gives details about the search result, and both concern the same subject matter, both are

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interpreted as concerning, and thus as being, part of the same advertisement. The search result is interpreted as the compact format of the advertisement while the preview is interpreted as the expanded format of the same advertisement).

(As discussed earlier during prosecution, format 2 “embedded preview window” suggests some data about the preview window was delivered with the publishers webpage. Since the publishers webpage was delivered with the search result (1<sup>st</sup> format) and data re. the instructions (e.g. the Javascript, see [0023], [0054]) as well as re. the 2nd format ( see e.g. [0054]) are also on the publishers webpage, **thus all 3 components of the ad are interpreted as necessarily delivered together**).

**PETROPOULOS also discloses:**

**the advertisement comprises menu options** comprising a link to at least one other web page that enable the user to request additional content(e.g. [0028]; [0029]: see discussion re. “cascading concept” and “directory structure” which read on menu options; [0030]: more search results reading on a menu; [0032]: preview information can be an advertisement with inherent links; [0042]: preview information include hyperlinks for mouse over or click on; or [0054], user may initiate a menu or control system for controlling the function of the available preview functions).

**PETROPOULOS does not disclose explicitly generation at the server of the ad including format 1, format 2 and code or instructions allowing transition between the two formats, as claimed.**

However it would have been obvious to one having ordinary skill in the art at the time of the invention (herein a "PHOSITA") that such advertisement would have to be generated before it can be sent to end user devices and to display as disclosed in PETROPOULOS.

**As stated earlier during prosecution, an ad with code or instructions is only a set of files. PETROPOULOS discloses at Fig 6, and [0064] a network of servers and other appliances connected to the end users by networks including the internet.**

(Also as stated earlier , PETROPOULOS is interpreted as disclosing storing a plurality of advertisements associated with one or more subject matters of interest to users, the plurality of advertisements comprising at least one morphing advertisement (Fig 1, items 60, 53, 54 are morphing ads in a search result lists; Fig 7, item 753: data store; [0073]: search results made of documents or webpages relevant to a subject searched are interpreted to include advertisements which are stored in data store 753) thus generation of the ad before storing, is obvious).

**Thus it would have been obvious that the ad files as disclosed by PETROPOULOS above would have to be generated at some server to be sent to PETROPOULOS 's end user.**

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**Further, if generation were to be interpreted as generation by an advertiser using an advertiser interface to input data relevant to the ad, Official Notice is taken** that advertiser interfaces enabling advertisers to input and/or modify/edit various advertisement data used for publication on publishers webpages are old and well-known at the time of the invention. **For example, see Meisel 7035812 (see abstract; Figs 2, 9 and associated text); Patel US US-2004/0103024 (see abstract, Figures 21, 22 and associated text; also see Figures 3, 17, 18 ).**

**Thus it would have been obvious to a PHOSITA** to add the advertiser interfaces as well known and used in the prior art (e.g. Meisel, Patel) to PETROPOULOS and modify them accordingly to allow the PETROPOULOS 's advertisers to input all necessary data to render the ad with the compact and expanded formats using the codes and instructions as disclosed in PETROPOULOS. In view of the level of skill evidenced in at least the above cited references a PHOSITA would have known to modify the advertiser interfaces accordingly.

**PETROPOULOS further does not disclose displaying the "expanded display format while no longer displaying the compact display format."**

However PETROPOULOS discloses different embodiments of the preview window. The preview window may cover "whatever information is below it on the (results ) web page." .. "either completely, in opaque fashion or semi-translucent fashion. ". See [0049] and Fig 3.

Further PETROPOULOS discloses expansively, at [0042],

*"The invention contemplates that the preview information may be displayed in any manner that the client system may facilitate. ... the preview information may also be displayed in one or more new browser windows opened under or over the current window or in a window which already exists on results page 59 such as preview window 55, which can be located anywhere on results page 59.... , the invention contemplates that the user can dynamically control the location of the preview window, its size and the duration of its visibility. "*

Thus in view of PETROPOULOS's teachings of the many formats (e.g. in size, location, duration, opacity) that the preview window can take, it would have been obvious to the PHOSITA that, if desired, the preview window can be made to opaquely cover the initial search result (the 1<sup>st</sup> advertisement format), thereby "displaying the expanded display format while no longer displaying the compact display format." as claimed. One would be motivated to cover the search result if one needs or wants to expand the preview window to increase readability and such need or desire results in covering the search result.

Further the system of PETROPOULOS in view of Official Notice (with e.g. Meisel or Patel as support thereof) , as discussed above, also discloses wherein the generating, receiving, and delivering are performed by one or more computers (citations above).

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**PETROPOULOS further discloses:**

claims 2, 35, 66, and 77 (dependent on claims 1, 34, 65 and 76):

wherein the second display format comprises additional information about the item being advertised compared to the first display format (see e.g. [0042]: e.g. hyperlinks in preview window allows retrieving more information; [0010]);

claims 3, 36 (dependent on claims 2, 35):

wherein the additional information comprises one or more images (see e.g. [0032]; Fig 1, item “57”);

claim 37 (dependent on claim 36):

wherein the additional information comprises menu options comprising a link to at least one other web page that enable the user to request additional content(e.g. [0028]; [0029]: see discussion re. “cascading concept” and “directory structure” which read on menu options; [0030]: more search results reading on a menu; [0032]: preview information can be an advertisement with inherent links; [0042]: preview information include hyperlinks for mouse over or click on; or [0054], user may initiate a menu or control system for controlling the function of the available preview functions);

claims 6, 38 (dependent on claims 1 (not 4) , 37):

wherein the options, upon selection, retrieve web content specified in association with the morphing advertisement delivered (e.g. [0028]; [0029]: see discussion re. “cascading concept” and “directory structure” which read on menu options; [0030]: more search results);

claims 7, 39 (dependent on claims 6, 38):

wherein the content retrieved comprises content provided by or affiliated with a host entity that performs the storing, receiving and delivering steps ([0025-26], preview information displays actual content or the web page referred by or associated with the first result delivered by the host entity; or [0029]: further contextual information re. URL pertaining to web page);

claims 8-9, 40, 67 and 78 (dependent on claims 2, 35, 65 and 76):

wherein the additional information comprises audio elements ([0043]) or an animation ([0043]: “any other sensory information” reads on including animation);

claims 10, 41, 68, and 79 (dependent on claims 1, 34, 65 and 76):

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wherein the one or more user requests comprises selection of an expansion icon presented as part of the first display format ([0037]-[0038]: preview icons, Fig. 1, items 63 or 64, used to open (i.e. expand to) preview pane 57 when moused over or clicked);

claims 11, 42, 69, and 80 (dependent on claims 1, 34, 65 and 76):

wherein the one or more user requests comprises a mouse-over of the first display format (e.g. [0038], user mousing over display icon to open preview display; or [0036]: mousing over defined area 60 of Fig 1 opens webpage 57);

claims 12, 43, and 70 (dependent on claims 1, 34, and 65): wherein the one or more user requests (interpreted as “to display the second format”) comprises a preference specified by the user ([0038], line 5: “user options” or [0042]: user may control attributes of preview window).;

claims 56, 71 (dependent on claims 1, 34, and 65):

wherein the instructions include data sufficient to enable the end user system to display the contents of the second display format (Petropoulos implicitly discloses such instructions to allow interpreting user action such as mouse over of the electronic ad and displaying the second display format, as discussed in e.g. [0042]: preview information displayed over the current window or in a window which already exists on results page such as a preview window that can be located anywhere on the results page);

claim 26 (dependent on claims 25)

wherein the second display format comprises a graphic (e.g. Fig 1 item 57);

Claims 28, 58, 73 -74 and 82-83 (dependent on claims 1, 34, 65, 76):

wherein the second display format covers different area in an interface of the end user system than the first display format (e.g. Figs 2 or 3, preview window is different from search results window that reads on first display format as well); wherein 2nd display format covers more area than 1st display format ( for claims 82, 73) (Petropoulos, e.g. [0027]; [0037]); wherein 2nd display format covers one or more advertisements ( for claims 74, 83) (Petropoulos, e.g. [0027]; [0037]);

Claim 60 (dependent on claim 44): wherein the second display format covers a different location than the first display format (e.g. location of Fig 1 item 55 (2<sup>nd</sup> display format) as compared to location of items 53, 54 (first display format)).

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**8. Claims 33, 64, and 75 are rejected under 35 U.S.C. 103(a) as being unpatentable over Petropoulos et al. in view of Official Notice (with e.g. Meisel 7035812 or Patel US US-2004/0103024 as support thereof).**

Claims 33, 64, and 75 (dependent on claims 1, 34, and 65):

PETROPOULOS in view of Official Notice (with e.g. Meisel or Patel as support thereof) disclose claims 1, 34, and 65.

Petropoulos further discloses second display formats are approved prior to being delivered ([0042], last few lines: filtering (i.e. approval) for content appropriateness in second display formats before transmission; [0032], last sentences: web page creators control second display formats with tags).

However neither PETROPOULOS nor the Official Notice explicitly disclose such controls or approval applicable to the first display formats.

However in the system of Petropoulos in view of Official Notice, it would have been obvious to one having ordinary skill in the art at the time of the invention to apply the same controls or approval that PETROPOULOS teaches as to the second format, to the first display formats, for the same disclosed advantages.

**9. Claims 27, 57, 72, 81 are rejected under 35 U.S.C. 103(a) as being unpatentable over PETROPOULOS in view of Official Notice (with e.g. Meisel or Patel as support thereof) as applied to claims 26, 56, 71, or 76 in view of Housman et al., US 20030224340 and further in view of Angelica US 20040239703.**

Claims 27, 57, 72, 81 (dependent on claims 26, 56, 71, 76):

PETROPOULOS in view of Official Notice (with e.g. Meisel or Patel as support thereof) discloses claims 26, 56, 71, 76 and PETROPOULOS discloses wherein the second display format comprises a graphic (e.g. Fig 1 item 57); however it is not disclosed wherein the instructions include an instruction to preload the graphic before an end user request to display the second display format.

However Housman teaches preloading requested images would increase display speed ([0054]).

Thus it would have been obvious to a PHOSITA to add this Housman teaching to PETROPOULOS in view of Official Notice (with e.g. Meisel or Patel as support thereof) because “[t]his obviously is much faster than having the user wait for his potentially-slow communications link to download the next requested answer” (Housman, [0054]).

Further Angelica US 20040239703 A1 in a system for expanding computer display advertising discloses java code for preloading graphics. See [0075]. Thus it would have been

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obvious to a PHOSITA to add code instructions as taught by Angelica to the above system to allow preloading the graphics.

**10. Claims 13-24, 44-55 are rejected under 35 U.S.C. 103(a) as being unpatentable over PETROPOULOS in view of Official Notice (with e.g. Meisel or Patel as support thereof) as applied to claims 1 or 34 above, and further in view of Meisel 7035812.**

Claims 13, 44:

PETROPOULOS in view of Official Notice (with e.g. Meisel 7035812 or Patel US US-2004/0103024 as support thereof) discloses a method as in Claim 1 or 34 above and discloses monitoring user interaction with the preview information (including length of interaction; clicks: [0073]) in order to revise the original rankings (based on relevance) of search results ([0072]-[0079]).

PETROPOULOS does not explicitly disclose search results ranked by monetary considerations, thus does not explicitly disclose:

storing a price parameter (in association with one or more advertisements) (interpreted as e.g. a cost per click or CPC) for certain performance by end users viewing the advertisement (interpreted as e.g. a click);

and upon receiving a request for an advertisement, determining one or more advertisements to deliver based at least in part on the price parameter (associated with a plurality of advertisements associated with the subject matter of interest).

But Meisel does (see e.g. abstract: “bid amount” is interpreted as cost per click).

**Thus it would have been obvious to one having ordinary skill in the art at the time of the invention** to add Meisel’s bidding system to the system of PETROPOULOS in view of Official Notice (with e.g. Meisel or Patel as support thereof) to allow also ranking search results based on monetary considerations.

Claims 14, 45 (dependent on claims 13, 44):

Note: “granting a ranking bonus for morphing advertisements” is interpreted as giving advertisers a bonus in order to encourage them to use morphing ads as per specification at paragraph [0093].

PETROPOULOS in view of Official Notice (with e.g. Meisel or Patel as support thereof) and MEISEL disclose a method as in Claim 13, 44 above and but neither discloses granting a ranking bonus for morphing advertisements in determining the one or more advertisements to deliver.

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Official Notice is taken that is old and well-known at the time of the invention to give incentives to encourage customers to try new products or services or new features thereof. See e.g. Partovi, US 20020126813 A1 (abstract: incentives for trying new phone features).

Thus in the search listings business, since ranking is valuable to advertisers, it would have been obvious to one having ordinary skill in the art at the time of the invention (herein a "PHOSITA") to give an incentive tied to rankings to encourage advertisers to use the new form of morphing advertisement until they can be convinced of its effectiveness.

Claims 15, 46 (dependent on claims 13, 44):

PETROPOULOS in view of Official Notice (with e.g. Meisel or Patel as support thereof) and MEISEL disclose a method as in Claims 13, 44 above. PETROPOULOS does not but Meisel does teach the determining step determines ranking of advertisements based on an effective revenue per impression determined based on bid amount and click-through-rate ("effective revenue per impression" is interpreted as a product of click through rate and cost per click, also called ecpm or ecpc. Meisel at col. 19 lines 45-55: each bid can be expressed in units of ecpm or ecpc. Since ranking in Meisel is based on bids, thus ranking is based ecpm or ecpc). Thus it would have been obvious to a PHOSITA to add this feature of Meisel to PETROPOULOS to allow ranking per effective revenue per impression.

Claims 16-17, 47-48:

PETROPOULOS in view of Official Notice (with e.g. Meisel or Patel as support thereof) and MEISEL disclose a method as in Claims 15, 46 above. Neither teach comprising the step of granting a bonus for morphing advertisements by taking an action causing a change to (or enhancing) the effective revenue per impression (or a price parameter) for the morphing advertisement.

Official Notice is taken that is old and well-known at the time of the invention to give incentives (or bonuses) to encourage customers to try new products or services or new features thereof. See e.g. Partovi, US 20020126813 A1 (abstract: incentives for trying new phone features).

Thus in the search listings business, since ads ranking is valuable to advertisers, and since ecpm (effective revenue per impression) determines rankings (see Meisel in discussion of claim 15 and 46 above), it would further been obvious to a PHOSITA that the bonus could be expressed in advantageous ecpm terms, (e.g. by increasing the ecpm for a particular ad based on which its ranking is determined without increasing the charge to the advertiser) thereby advantageously affect the rankings for ads using the new morphing ad format.



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Claims 18, 49:

PETROPOULOS in view of Official Notice (with e.g. Meisel or Patel as support thereof) and MEISEL disclose a method as in Claims 17, 48 above. Neither explicitly teaches wherein the advertiser is charged based on the price parameter but not the increased price parameter value when the morphing advertisement achieves one or more performance parameters (e.g. when the end user clicks on a morphing ad). However as discussed above in claims 16-17, 47-48, a bonus is given to advertisers to try the new morphing ad format, in forms of an enhanced ecpm that advantageously influence that ranking. Thus it would have been obvious to a PHOSITA that the advertiser of PETROPOULOS and MEISEL should only be charged the price parameter based on her bid (and not the enhanced or increased price parameter value), otherwise the bonus would have been negated.

Claims 19, 50:

PETROPOULOS in view of Official Notice (with e.g. Meisel or Patel as support thereof) and MEISEL disclose a method as in Claims 13, 44 above. Neither explicitly teaches the advertiser is charged an increased amount for a morphing advertisement. However it would have been obvious to a PHOSITA to charge more for the morphing advertisement if it later proves to be an effective format and demand from advertisers allows, and/or its cost of production justifies, increasing its price.

Claims 20-21, 23, 51-52, 54:

PETROPOULOS in view of Official Notice (with e.g. Meisel or Patel as support thereof) and MEISEL disclose a method as in Claims 13, 44 above. Neither explicitly teaches calculating an amount owed by an advertiser associated with an advertisement based on the advertisement meeting a performance parameter associated with the morphing advertisement, wherein the performance parameter is determined based on user activity associated with the second display format, or based on user request to view the second display format.

However PETROPOULOS teaches tracking user behavior pertaining to the second display format (i.e. a performance parameter is met as to the morphing ad and/or second display format) ([0042]: "functional attributes of preview window include the use of a scroll bar, hyperlinks that a user can mouse over or click on which would result in a call to the referenced page"; [0073]; also see ([0026], preview information include URLs as links; [0054]: menu or control system for controlling the function of the available preview functions).

Further Meisel teaches billing advertisers based on their bids (abstract).

Thus it would have been obvious to a PHOSITA, in the PETROPOULOS and MEISEL system, to bill the advertiser (or calculate an amount owed by an advertiser as claimed) when an end user interacts with (e.g. by clicking) the morphing ad and the second display format of the

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system (i.e. based on the morphing advertisement meeting a performance parameter as claimed) in order to collect revenues for the ad service.

Claims 22, 53:

PETROPOULOS in view of Official Notice (with e.g. Meisel or Patel as support thereof) and MEISEL disclose a method as in Claims 21, and 52 above. Neither explicitly teaches the billing is based on the user activity comprising a predetermined period of time viewing the second display format. However Petropoulos further discloses wherein the user activity comprises a predetermined period of time viewing the second display format ([0042], user can dynamically control the duration of the preview window visibility, see also [0073-75], user's use of preview information monitored including the length of each preview, a long duration indicates high relevancy to a particular result). **Further Official Notice is taken** that it is old and well-known at the time of the invention that billing an advertiser for an amount of time the user interacts with an advertisement is **old and well-known** at invention time (e.g. see **Faber, US 20050114210** , at [0070]). Thus in the system of PETROPOULOS and MEISEL, it would have been obvious to a PHOSITA to charge advertisers based on a predetermined time of user interaction (as is well-known) and which can be tracked as taught by PETROPOULOS for the purpose of billing based on this well-known measurable value basis.

Claims 24, 55:

PETROPOULOS in view of Official Notice (with e.g. Meisel or Patel as support thereof) and MEISEL disclose a method as in Claims 21, and 52 above. Neither PETROPOULOS or MEISEL teaches the user activity comprises a predetermined number of user selections of menu options, navigational links or other controls available in the second display format. However Petropoulos discloses wherein the user activity comprises a predetermined number of user selections of the one or more menu options available in the second display format ([0026], preview information include URLs, with respect to URLs used as preview information these URLs will function as links, see also [0054], user may initiate a menu or control system for controlling the function of the available preview functions).

Thus in the system of PETROPOULOS and MEISEL, it would have been obvious to a PHOSITA to charge advertisers based on all the user behaviors cited above which can be tracked in PETROPOULOS for the purpose of billing based on specified user behavior which may indicate different levels of interaction with the morphing ad and/or second display format which may be of different values to the advertisers.

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**11. Claims 29-32, 61-63 are rejected under 35 U.S.C. 103(a) as being unpatentable over PETROPOULOS in view of Official Notice (with e.g. Meisel or Patel as support thereof) , in view of Meisel, as applied to Claims 28, 34 above and further in view of Telagon, US 20030135460.**

Claims 29-32, 61-63:

PETROPOULOS in view of Official Notice (with e.g. Meisel or Patel as support thereof) discloses a method as in Claims 28, 34 above and MEISEL further discloses an ad priority scheme based on bid prices (see discussion at paragraph 13 above) thus the combination of PETROPOULOS and MEISEL discloses the steps of: storing a price parameter value in association with one or more advertisements when the advertisement meets one or more performance parameters with respect to the end user; upon receiving a request for an advertisement, determining one or more advertisements to deliver , in a priority scheme, based at least in part on the price parameter associated with a plurality of advertisements associated with the subject matter of interest; and wherein the step of determining includes assessing whether to deliver a morphing advertisement based on the price parameter of the morphing advertisement ( citations and discussion at paragraph 13 above).

PETROPOULOS in view of Official Notice (with e.g. Meisel or Patel as support thereof) and MEISEL do not disclose delivery of the morphing advertisement is also based on:

“the price parameter value of at least one other advertisement and at least one area-based parameter” ; or

further “wherein the area-based parameter comprises the price parameter value of at least one advertisement that the second display format would cover upon user request”; or

wherein the morphing advertisement may cover one or more other advertisements, the price parameter value associated with each other advertisement that the second display format covers plus a premium amount.

However Telagon, in a system for valuing and placing ads, teaches the concept that an advertiser paying more should have more exposure within a limited ad space ([0039]; [0045]). Telagon gives the example that if there are 6 ad segments or displays available within an ad space, an advertiser bidding \$20 while four others bid \$10 dollars each, should get two/sixth of the available ad segments [0045].

Thus Telagon teaches the ad price is directly proportional to the ad space covered by the ad i.e. proportional to the real estate used by the ad. Thus it would have been obvious to a PHOSITA to add this concept taught by Telagon to PETROPOULOS and MEISEL in order to fairly price the advantage given to an expanding ad that covers other ads. It would further have been logical and thus obvious that if an ad, e.g. ad #1, should expand and cover another ad (e.g. ad#2) then that ad #1, would also have to pay, in addition to its own bid price, the price that ad #2 would otherwise have fetched, because of the benefit to ad #1 and the detriment to ad #2. By the same token if further expansions of ad#1 are requested thus covering other ads (e.g. ad#3 to ad #n), it would have been further obvious to a PHOSITA, that the charge to ad #1 should and

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could be increased to cover the bids of ad#3 to ad #n , again because of the benefit to ad #1 and the detriment to ad #3 to ad #n. (Also since duplication of parts has been held obvious, here, duplication of charges for ad #3 to ad #n would have been obvious as mere duplications of charges of ad #2).

Further it is well-known parties to a contract can agree to any contractual terms, including compensation terms, for any purpose. Thus to add a premium as claimed would have been an obvious matter of design choice, only subject to agreement by the parties, for the purpose, e.g. to make a better profit for the ad service.

### ***Response to Arguments***

12. Applicant's arguments filed 05/05/2010 have been considered but are not persuasive.

Applicant at Response p. 23 argues the prior art does not disclose “delivering at one time” from the server to the user device, the advertisement including the claimed formats and the claimed code.

The Examiner asserts that, contrary to argument, the following explanation sufficiently establishes the inherency of the “delivering at one time” step as claimed. See 02/08/2010 OA, p. 8 and also above)

*An advertisement is a file or set of files. In PETROPOULOS , the advertisement is considered a file or set of files, comprising the totality of data about format 1 (search result), data about format 2 (preview window), including their contents, and functionalities such as the expansion icon and code such as **the JavaScript in PETROPOULOS 's [0023]** “The defined areas are program-designated (perhaps with JavaScript) areas on results page 59” which enables the transition from format 1 to format 2. **All this data, instructions and code are inherently sent from a server to end user to allow display as disclosed in PETROPOULOS.***

*(As discussed earlier during prosecution, since the PETROPOULOS's preview window gives details about the search result, and both concern the same subject matter, both are interpreted as concerning, and thus as being, part of the same advertisement. The search result is interpreted as the compact format of the advertisement while the preview is interpreted as the expanded format of the same advertisement).*

*(As discussed earlier during prosecution, format 2 “embedded preview window” suggests some data about the preview window was delivered with the publishers webpage. Since the publishers webpage was delivered with the search result (1<sup>st</sup> format) and data re. the instructions (e.g. the Javascript, see [0023], [0054]) as well as re. the 2nd format ( see e.g.*

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[0054]) are also on the publishers webpage, **thus all 3 components of the ad are interpreted as necessarily delivered together**).

At Response p. 24, Appellant further argues the relied upon portions of Petropoulos do not teach or suggest Applicant's claimed morphing advertisement including the compact and expanded display formats as well as the code that allows the end user system to transition between the two, "delivered as part of a single morphing advertisement (i.e., delivered at one time, not the result of two separate calls".

The examiner first notes that a search of the Specification does not reveal how the "one time delivery" claimed is different from that performed by PETROPOULOS. Note that terms analogous to "one time delivery" are not used. Note that even though an morphing ad is disclosed, with two formats, what exactly constitute the morphing ad, i.e. whether the code is clearly defined as part of the morphing ad is not clearly disclosed. Applicant is invited to point to the specific support that would show the difference between the claimed limitation of "delivering at one time" and the embedded code of Petropoulos (e.g. *the Javascript, see [0023], [0054]*) that allows moving from the 2 formats as discussed above.

Second, the Examiner notes claim 1 recites in part (bold emphasis added) :

**generating, at a server, a morphing advertisement** including a compact display format including an associated expansion icon, an expanded display format comprising one or more menu options and a reference to a network location for retrieving specified content associated with each menu option, **and code** a client device **uses to transition the morphing advertisement** from the compact display format into the expanded display format upon a user request to display the expanded display format; receiving a request for one or more advertisements related to a subject matter of interest to be presented ~~on a~~ webpage with content associated with a publisher; and **delivering at one time, from the server to an end user device, the morphing advertisement** in response to the request to be presented ~~on the webpage~~ with the content associated with the publisher, **the morphing advertisement including the compact display format, the expanded display format, and the code.**

Thus claim 1 can be interpreted, for the relevant parts now under argument, as:

- 1) generating a morphing ad, including the two formats,
- 2) generating code used to transition the morphing ad between the two formats
- 3) delivering at one time ( from the server to the user, in response to a user request) a) the morphing ad, the morphing ad including the two formats, and b) the code.

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Thus, the generating step does not claim the code has to be part of the morphing ad, contrary to the arguments. Similarly, for the delivering step, “delivering at one time” can be interpreted as delivering the code separately from the morphing ad, even if the two deliveries can be simultaneous. In other words, the code can be interpreted as being not part of the morphing ad. Thus at least the JavaScript in PETROPOULOS’s webpage ( see e.g.[0023],[0054] that facilitates the transition from format 1 to 2, which is delivered with the search results webpage, can be considered delivered at the same time as the search result (1<sup>st</sup> format) and the format 2 “embedded preview window”(because“ embedded” suggests some data about the preview window was delivered with the publishers webpage).

Third, note that the instant specification shows many ways of delivering a morphing ad (see e.g. [0054]), one of which is by embedding code such as JavaScript in the content page as one way of allowing the transition (see [0055]). Which is exactly what Petropoulos discloses.

At Response p. 24 Appellant also argues no rationale or evidence has been provided that tends to show including a code with the preview window and the search result is an inherent characteristic of Petropoulos. Applicant argues that Petropoulos teaches away from the idea, because the Petropoulos's code is already included in the web page and not included as part of any morphing advertisement that is received as recited in claim 1.” The Examiner notes that nothing in the claim forbids JavaScript and DHTML technology HTML, DHTML, JavaScript, Flash and other browser cognizable content to be included in the publisher's webpage. Thus there is no teaching away. Note that instant specification at [0059], [0060], [0068], which the Examiner deems closest to supporting the claimed 3 elements of the morphing ad, still just disclose Javascript in an HTML page as done in Petropolous. Also, as discussed above Petropoulos’s embedded code in the search results page that allows transition from search result format to preview format meet the claim language.

Applicant also argues Petropoulos teaches sequential fetching of formats ( Response p. 24). Examiner notes instant specification at [ 0068] which as discussed above the Examiner deems as the closest support to the claims, also discloses fetching the 2<sup>nd</sup> format, albeit preloaded, from the user location (“...Upon selection or other indication by the user to transition the ad or morph the ad from a first display format to a second display format, a request may be processed solely at the end user system based upon the Java script described above. Accordingly, no further instruction to content/search and advertisement system may be required to transition the ad from a first display format to a second display format.. “). That is, again Petropoulos reads on the claims as interpreted in view of the Specification.

At Response p. 22, attacking Petropolous [0073] as only disclosing information about documents and web pages, Applicant argues the prior art does not disclose generation of the morphing ad including the claimed two formats, and the claimed code and argues no convincing line of reasoning was provided. The Examiner notes a step of generation necessarily has to

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precede the step of having an ad to send to end user devices for display as disclosed in PETROPOULOS (see 02/08/2010 OA, p. 9, and also above). Also as discussed above, the claim interpretation above shows the code can be interpreted as separate from the claimed morphing ad thus the prior art does not need to disclose generation of the ad with the 3 elements as argued.

Applicants also argue against the Official Notice as not teaching a morphing ad, however the Official Notice was used to teach advertisers' interfaces, thus the argument is unpersuasive as misdirected.

Lastly as noted during prosecution, for prior art application, even though the Examiner has given weight to the wherein limitations in the apparatus claims 34-64, she does not have to, since these wherein limitations are either outside the scope of the claim (e.g. claim 39, since claim 34 only claims an apparatus comprising a storage database, a server for generating a morphing ad, receive a request for ads, delivering the ad in response to the user request; also e.g. claims 41, 50-52) or as non functional descriptive material (data only) (e.g. claim 35).

### Conclusion

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khanh H. Le whose telephone number is 571-272-6721. The Examiner works a part-time schedule and can normally be reached on Monday-Wednesday 9:00-6:00. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, JASMIN LYNDA can be reached on (571)272-6782. The fax phone numbers for the organization where this application or proceeding is assigned are 571-273-8300 for regular communications and for After Final communications. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-3600. For patent related correspondence, hand carry deliveries

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must be made to the Customer Service Window (now located at the Randolph Building, 401 Dulany Street, Alexandria, VA 22314). Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Khanh H. Le/

Primary Examiner, Art Unit 3688